

technical update

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The key amendments introduced in statutes, policies and procedures in respect of Direct Tax, Indirect Tax, Corporate Laws & Accounting Standards, Foreign Exchange Management Act / Export Import Policy & Securities and Exchange Board of India related matters are summarized here under.

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DIRECT TAX

1. CBDT issues Cost Inflation Index (CII) for FY 2018-19 (AY 2019-20)

In exercise of the powers conferred by clause (v) of the Explanation to section 48 of the Income-tax Act, 1961 the Central Government had earlier vide notification dated June 5, 2017 notified the Cost Inflation Index (CII) up to Financial Year 2017-18 shifting the Base Year to Financial Year 2001-02 in line with the amendments made by the Finance Act, 2017. CII is notified by the Central Government with reference to average rise in the consumer price index (urban) during the year immediately preceding the relevant previous year. CBDT issued notification dated June 13, 2018 apprising CII for Financial Year 2018-19, that is, Assessment Year 2019-20 at 280. The said notification shall apply to Assessment Year 2019-20 and subsequent years.

Source: CBDT Notification no 26/2018 dated June 13, 2018

2. CBDT proposes amendment in Rule 10CB in respect of interest computation pursuant to secondary adjustment u/s 92CE of the Act

CBDT has released a draft notification proposing to amend Rule 10CB of the Income Tax Rules, 1962 pertaining to computation of interest income pursuant to secondary adjustment in cases where primary adjustment arises on account of Agreement for Advance Pricing (APA) and Mutual Agreement Procedure (MAP).

Rule 10CB specifies a uniform time limit of 90 days for repatriation of excess money from the relevant dates, such as date of order of Assessing Officer or Appellate Authority or due date of filing of return u/s 139(1) pursuant to suo-motuo adjustment, adjustment on account of APA, Safe Harbour Rules or MAP, as the case may be. This is done in order to provide for uniform treatment in respect of the different types/situations of primary adjustments.

Certain difficulties have been noted in implementing the said rule in respect of primary adjustment that arises on account of APA entered into by the assessee, or on account of an agreement reached under MAP. Hence in order to overcome these difficulties, CBDT has proposed to amend rule 10CB and specifies the time limit for repatriation of excess money as follows:

- a. In case of APA - 90 days from the date on which APA has been entered into
- b. In case of MAP – 90 days from the date of giving effect by Assessing Officer to the MAP resolution under Rule 44H

Comments and suggestions on the draft rules may be sent by 9th July, 2018 electronically at the email address ustpl3@nic.in.

Source: CBDT notification bearing F. No. 370142/12/2017-TPL dated June 19, 2018 and CBDT Press Release dated June 20, 2018

3. Advance Ruling - Non-compete fees received by a foreign company from an Indian Company being business income shall not be chargeable to tax in absence of any Permanent Establishment in India as per DTAA between India and United Kingdom

ADI BPO Services Private Limited (ADI), an Indian company entered into a Share Purchase Agreement with HM Publisher Holdings Limited (the Applicant),

a company incorporated in United Kingdom whereby ADI will purchase all the shares held by the Applicant in MPS Limited (MPS), an Indian listed company and pay to the Applicant a sum of Rs. 37.38 Crores as purchase price and a Non-compete fee of Rs. 9.30 crores as consideration.

As per the Advance Ruling, non-compete fee received by the Applicant from ADI as a part of the consideration for transfer of shares held in MPS shall be considered as business income in accordance with section 28 (va) of the Income Tax Act, 1961 (the Act) and not Capital Gains since there is no "transfer" of "right to carry on any business" as envisaged by the proviso to section 28 (va) which excludes consideration on account of transfer of right from the purview of business income.

Since the non-compete fee is in the nature of business income and the Applicant has no Permanent Establishment ('PE') in India, the same will not be taxable in India by virtue of Article 7 of the India-UK Double Taxation Avoidance Agreement ('DTAA') which provides that business income shall be taxable only in the UK in absence of a PE in India.

As per the non-compete clause, the Applicant was restrained from carrying out similar activities as those of MPS for a period of three years since it was in possession of confidential and proprietary information relating to the business and operations of MPS. Thus, the Applicant had simply imposed a restriction upon itself and not transferred any right to ADI.

Source: Advance Ruling in case of HM Publishers Holdings Ltd (AAR - New Delhi) [A.A.R. NO. 1238 OF 2012] dated June 6, 2018

INDIRECT TAX

1. Clarification regarding requirement of filling LUT/bond for Zero rated supply of exempted or non-GST goods & eligibility for refund

It has been clarified that requirement of filling of LUT/bond cannot be insisted in case of Zero rated supply of exempted or non-GST goods. Also, the exporter would be eligible for refund of unutilized ITC on complying with provisions specified in the law.

Source: Vide Circular No. 45/19/2018 -GST dated May 30, 2018

2. Seeks to exempt payment of tax under section 9(4) of the CGST Act, 2017 till September 30, 2018

Central government has deferred the payment of tax on procurement from un-registered dealer under Section 9(4) of the CGST Act, 2017 till September 30, 2018.

Source: Vide Notification No. 12/2018-Central Tax (Rate) dated June 29, 2018

3. Seeks to levy GST on Priority Sector Lending Certificate under Reverse Charge Mechanism

It has been notified that recipient of supply shall be liable to pay GST under Reverse Charge Mechanism on Priority Sector Lending Certificate under Section 5(3) of the IGST Act, 2017.

Source: – Vide Notification No. 12/2018-Integrated Tax (Rate) dated May 28, 2018

4. Extension of due date for filing FORM GSTR-6 for the months from July, 2017 to June, 2018

The time limit for furnishing return by an Input Service Distributor in FORM GSTR-6 for the months from July, 2017 to June, 2018 has been extended till July 31, 2018.

Source: Vide Notification No. 25/2018-Central Tax dated May 31, 2018

5. Clarification regarding eligibility for refund of unutilized ITC on account of inverted duty structure for fabric processors supplying job work services

It has been clarified that fabric processors (job workers) shall be eligible for refund of unutilized ITC on account of inverted duty structure u/s 54(3) of CGST Act, 2017 even if fabrics supplied to them are covered under Notification No. 5/2017-Central Tax (Rate) as the output supply for fabric processors is the supply of job work services and not goods.

Source: Vide Circular No. 48/22/2018-GST dated June 14, 2018

COMPANY LAW

1. Notification of the Companies (Significant Beneficial Owners) Rules, 2018

The MCA vide notification dated June 13, 2018 has notified the Companies (Significant Beneficial Owners) Rules, 2018. Following are the important points to be considered:

- Every significant beneficial owner (Beneficial owner holding ultimate beneficial interest not less than 10% and whose name not entered in the register of members of a Company) shall file a declaration in the prescribed form to the company in which he holds the significant beneficial ownership on the date of commencement of these rules within ninety days from such commencement and within thirty days in case of any change in his significant beneficial ownership.
- The company in turn shall file a return in prescribed form with the Registrar in respect of such declaration, within a period of thirty days from the date of receipt of declaration

Source: [http://mca.gov.in/Ministry/pdf/Companies Significant Beneficial 1306_14062018.pdf](http://mca.gov.in/Ministry/pdf/Companies%20Significant%20Beneficial%20Owners%20Rules%202018.pdf)

2. Notification of (Management and Administration) Second Amendment Rules, 2018

The MCA vide notification dated June 13, 2018 has amended the Companies (Management and Administration) Rules, 2014. With this Notification following changes will come into effect:

- Rule 13 with respect to requirement of filing of Changes in Shareholding Position of Promoters and Top Ten Shareholders for listed companies has been omitted.

- Special resolution is not required to be passed if the registers or copies of return to be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside.
- The company shall hold EGM at any place within India except WOS of company incorporated outside India.
- Items required to be passed by Postal Ballot can be transacted at general meeting with e-voting facility to members, however exemption is granted to all companies with members up to 200 and OPCs.

Source: [http://mca.gov.in/Ministry/pdf/Company 2nd Amnd Rule 13062018_14062018.pdf](http://mca.gov.in/Ministry/pdf/Company%202nd%20Amnd%20Rule%2013062018_14062018.pdf)

RBI, DGFT & FEMA Notifications

1. Foreign Investment in India - Reporting in Single Master Form

As announced in the First Bi-monthly Monetary Policy Review dated April 5, 2018, Reserve Bank, with the objective of integrating the extant reporting structures of various types of foreign investment in India, will introduce a Single Master Form (SMF). The SMF would be filed online.

SMF would provide a facility for reporting total foreign investment in an Indian entity {as defined in Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations 2017, dated November 7, 2017}, as also investment by persons resident outside India in an Investment Vehicle.

Prior to the implementation of the SMF, Reserve Bank would provide an interface to the Indian entities, to input the data on total foreign investment in a specified format. The interface will be available on RBI website <https://firms.rbi.org.in> from June 28, 2018 to July 12, 2018. Indian entities not complying with this pre-requisite will not be able to receive foreign investment (including indirect foreign investment) and will be non-compliant with Foreign Exchange Management Act, 1999 and regulations made there under.

Source: <https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11297&Mode=0> dated June 07, 2018

2. RBI releases June 2018 Financial Stability Report

The Reserve Bank of India today released the Financial Stability Report (FSR), 17th in the series.

The FSR reflects the overall assessment of the stability of India's financial system and its resilience to risks emanating from global and domestic factors. The Report also discusses issues relating to developments in and regulation of the financial sector.

Global and domestic macro-financial risks

- Global growth outlook for 2018 remains positive despite some recent softness.
- Spillover risk from advanced financial markets to emerging markets, however, has increased.

- Tightening of liquidity conditions in the developed markets alongside expansionary US fiscal policy and a strong US dollar have started to adversely impact emerging market currencies, bonds and capital flows. Firming commodity prices, evolving geopolitical developments and rising protectionist sentiments pose added risks.
- On the domestic front, economic growth is firming up. However, conditions that buttressed fiscal consolidation, moderation in inflation and a benign current account deficit over the last few years, are changing, thereby warranting caution.

Financial Institutions: Performance and risks

- The stress in the banking sector continues as gross non-performing advances (GNPA) ratio rises further.
- Profitability of SCBs declined, partly reflecting increased provisioning. While this has added pressure on SCBs' regulatory capital ratios, the provision coverage ratio has increased.
- Credit growth of SCBs picked up during 2017-18 notwithstanding sluggish deposit growth

Source: https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=44305
dated June 26, 2018

3. Amendment in the Chapter-I of FTP 2015-2020

In exercise of the powers conferred by Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 read with Para 1.02 of the Foreign Trade Policy, 2015-2020, the Central Government hereby makes the following amendments in the Foreign Trade Policy 2015-2020,

Effects of the this notifications leads to entitlement for duty free import of sector specific inputs which were available in Chapter 1B of FTP 2009-14 have been re-inserted in Chapter 1 of FTP 2015-20 w.e.f. 01.04.2015.

Source: <http://dgft.gov.in/Exim/2000/NOT/NOT18/Noti%209%20eng.pdf> dated
May 26, 2018

4. Amendment in import policy conditions of Natural Rubber under Exim code 4001 10 of Chapter 40 of ITC (HS), 2017 - Schedule - 1 (Import Policy)

In exercise of powers conferred by Section 3 of FT (D&R) Act, 1992, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby amends the Import Policy Conditions of Natural Rubber under Exim code 4001 of Chapter 40 of ITC (HS), 2017 - Schedule - 1

Effect of this Notification: Port restriction is not applicable on import of Natural Rubber of all varieties/forms covered under EXIM Code 4001, under Advance Authorisation.

5. Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 (Amended up to June 01, 2018)

In exercise of the powers conferred by clause (b) of sub-section (3) of section 6 read with section 47 of the Foreign Exchange Management Act, 1999, Reserve Bank of India hereby notifies that proviso (ii) to sub-regulation (1) of regulation 10 and proviso (ii) to sub-regulation (2) of regulation 10 of the Foreign Exchange Management (Transfer or Issue of Security by a person resident outside India) Regulations, 2017, shall come into force with effect from June 02, 2018.

Source: <https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11298&Mode=0> dated June 01, 2018

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